

**From:** [LERS, EOIR \(EOIR\)](#)  
**To:** [All of CLAD \(EOIR\)](#); [All of Judges \(EOIR\)](#); [All of OCIJ JLC \(EOIR\)](#); [Allen, Patricia M. \(EOIR\)](#); [Anderson, Jill \(EOIR\)](#); [Baptista, Christina \(EOIR\)](#); [Bauder, Melissa \(EOIR\)](#); [Berkeley, Nathan \(EOIR\)](#); [BIA ATTORNEYS \(EOIR\)](#); [BIA BOARD MEMBERS \(EOIR\)](#); [BIA TEAM JLC](#); [BIA TEAM P \(EOIR\)](#); [Brazill, Caitlin \(EOIR\)](#); [Burgie, Brea \(EOIR\)](#); [Burgus, Elizabeth \(EOIR\)](#); [Calvert, Irvina \(EOIR\)](#); [Cardenas, Lupe \(EOIR\)](#); [Carr, Donna \(EOIR\)](#); [Cicchini, Daniel \(EOIR\)](#); [Cowles, Jon \(EOIR\)](#); [Crossley, Maurice \(EOIR\)](#); [Cudo, Relanie \(EOIR\)](#); [Curry, Michelle \(EOIR\)](#); [D'Angelo, Matthew \(EOIR\)](#); [Evans, Brianna \(EOIR\)](#); [Gonzalez, Robert \(EOIR\)](#); [Grodin, Edward \(EOIR\)](#); [Hammond, Nicole \(EOIR\)](#); [Hartman, Alexander \(EOIR\)](#); [Hess, Chris \(EOIR\)](#); [Kaplan, Matthew \(EOIR\)](#); [King, Jean \(EOIR\)](#); [Korniluk, Artur \(EOIR\)](#); [Lang, Steven \(EOIR\)](#); [LERS, EOIR \(EOIR\)](#); [Lovejoy, Erin \(EOIR\)](#); [Martinez, Casey L. \(EOIR\)](#); [Mitchell, Carla \(EOIR\)](#); [Morteo, Cristina \(EOIR\)](#); [Noferi, Mark \(EOIR\)](#); [Nunez, Steven \(EOIR\)](#); [O'Hara, Shelley M. \(EOIR\)](#); [Park, Jeannie \(EOIR\)](#); [Podgorski, Monika \(EOIR\)](#); [Powell, Karen B. \(EOIR\)](#); [Ramirez, Sergio \(EOIR\)](#); [Rimmer, Phillip \(EOIR\)](#); [Robbins, Laura \(EOIR\)](#); [Rodrigues, Paul A. \(EOIR\)](#); [Rodriguez, Bernardo \(EOIR\)](#); [Rothwarf, Marta \(EOIR\)](#); [Sanders, John W. \(EOIR\)](#); [Santoro, Christopher A \(EOIR\)](#); [Schaaf, Joseph R. \(EOIR\)](#); [Smith, Terry \(EOIR\)](#); [Stutman, Robin M. \(EOIR\)](#); [Swanwick, Daniel \(EOIR\)](#); [Taufa, Elizabeth \(EOIR\)](#); [Vayo, Elizabeth \(EOIR\)](#)  
**Cc:** [McHenry, James \(EOIR\)](#); [Reilly, Katherine \(EOIR\)](#); [Sheehey, Kate \(EOIR\)](#); [Alder Reid, Lauren \(EOIR\)](#); [Moutinho, Deborah \(EOIR\)](#); [Adams, Amanda \(EOIR\)](#); [Pease, Jeffrey \(EOIR\)](#); [Macri, Andrea \(EOIR\)](#); [Morgan, Kenosha \(EOIR\)](#); [EOIR Library \(EOIR\)](#)  
**Subject:** Policy & Case Law Bulletin - October 19, 2018  
**Date:** Friday, October 19, 2018 8:16:14 PM

**EXECUTIVE OFFICE FOR  
IMMIGRATION REVIEW**  
Office of Policy | Legal Education and  
Research Services Division

| Policy & Case Law Bulletin  
October 19, 2018

## Federal Agencies

### DOJ

- [Attorney General Directs the Board to Refer its Decision in Matter of Negusie to Him for Review](#) — EOIR

27 I&N Dec. 481 (A.G. 2018)

The Attorney General referred the decision of the Board of Immigration Appeals to himself for review of issues relating to whether coercion and duress are relevant to the application of the Immigration and Nationality Act's persecutor bar. See 8 U.S.C. §§ 1101(a)(42), 1158(b)(2)(A)(i), 1231(b)(3)(B)(i)(2012). The Board's decision is stayed pending the Attorney General's review of the matter. He directed the parties to submit any briefs on or before November 8, 2018, and any reply briefs on or before November 15, 2018. He further invited interested amici to submit briefs on or before November 15, 2018.

- [The Board issues a Decision in Matter of M-A-C-O-](#) — EOIR

27 I&N Dec. 477 (BIA 2018)

An Immigration Judge has initial jurisdiction over an asylum application filed by a respondent who was previously determined to be an unaccompanied alien child but who turned 18 before filing the application.

- [Virtual Law Library Weekly Update](#) — EOIR

This update includes resources recently added to EOIR's internal or external Virtual Law Library, such as Federal Register Notices, country conditions information, and links to recently-updated immigration law publications.

### DHS

- [USCIS Continuing Form I-751 Data Entry](#)

On October 18, 2018, USCIS announced that it "has completed receipting and data entry

for all filings of Form I-751, Petition to Remove Conditions on Residence, received between May 1 and Sept. 9, 2018. Petitioners should receive receipt notices by Oct. 22, 2018. On June 13, 2018, USCIS announced that the California Service Center (CSC) was experiencing a delay in initial data entry for Form I-751. After changing the filing location for Form I-751 from the USCIS Service Centers to the USCIS Lockbox facilities in September, USCIS completed receipting and data entry of these petitions on Oct. 1."

- [USCIS Policy Manual Update](#)

On October 16, 2018, USCIS issued a notice of a policy guidance revision for the validity period of Form I-693, Report of Medical Examination and Vaccination Record. "The updated policy, which goes into effect on Nov. 1, 2018, will require applicants to submit a Form I-693 that is signed by a civil surgeon no more than 60 days before filing the underlying application for an immigration benefit. The Form I-693 would remain valid for a two-year period following the date the civil surgeon signed it. As such, USCIS is retaining the current maximum two-year validity period of Form I-693, but calculating it in a different manner to both enhance operational efficiencies and reduce the number of requests to applicants for an updated Form I-693."

DOL

- [Updated Program Factsheets Containing FY 2018 Q4 Selected Statistics](#)

The Office of Foreign Labor Certification has posted updated program factsheets (and the underlying data files) containing the Quarter 4 FY 2018 selected statistics for the Permanent Labor Certification Program, Prevailing Wage Determination Program, H-1B Temporary Visa Program, H-2A Temporary Agricultural Visa Program, and H-2B Temporary Non-agricultural Visa Program.

DOS

- [DOS Posts November Visa Bulletin](#)

The Visa Bulletin includes a summary of available immigrant numbers, visa availability, and scheduled expiration of visa categories.

- [DOS Updates 9 FAM](#)

DOS made updates to 9 FAM, including to section [302.7\(U\)](#), to reflect changes at 9 FAM 302.7-10(D)(1) and (D)(2) to include possibility of a waiver for 8 U.S.C. 1182(f) immigrants and nonimmigrants and section [305.2](#), revising 9 FAM 305.2-7(G), Participation in Forced or Coercive Abortion or Sterilization - 8 U.S.C. 1182(e), and 9 FAM 305.2-7(H), Participation in Coercive Organ or Tissue Transplantation - 8 U.S.C. 1182(f), to include the possibility of a waiver.

## Supreme Court

CERT. DENIED

- [Perez v. Sessions](#)

No. 18-5859, 2018 U.S. LEXIS 6251 (Oct. 15, 2018)

Question(s) presented are not available at this time.

## Third Circuit

- [Martinez v. Att'y Gen. United States](#)

No. 17-3434, 2018 WL 4997937 (3d Cir. Oct. 16, 2018) (Aggravated Felony; Controlled Substances)

The Third Circuit denied the PFR, affirming the Board's determination that Martinez is

removable and ineligible for cancellation of removal because of his convictions under N.J. Stat. Ann. § 2C:35-5(a)(1) and (b)(1) involving the possession of cocaine with intent to distribute and distributing cocaine. In rejecting Martinez's arguments, the court determined that New Jersey attempt law is no broader than federal law—both require a substantial step that strongly corroborates the actor's criminal purpose and both hold that solicitation can count as a substantial step. Therefore, Martinez's conviction, which could have rested on a mere attempt, constitutes an aggravated felony drug trafficking offense under section 237(a)(2)(A)(iii) of the Act. The court also determined that, on the date of Martinez's conviction, the federal and New Jersey lists of controlled substances were identical. As such, Martinez's conviction also constitutes a categorical controlled substance offense under section 237(a)(2)(B)(i) of the Act.

- [Borbot v. Warden Hudson Cty. Corr. Facility](#)

No. 17-2814, 2018 WL 4997934 (3d Cir. Oct. 16, 2018) (Bond)

The Third Circuit affirmed the District Court's order dismissing Borbot's petition for a writ of habeas corpus. The court determined that, unlike aliens who are detained under section 236(c) of the Act for prolonged periods without being given any opportunity to apply for release on bond, Borbot was granted meaningful process prior to filing his habeas petition. Although the court recognized Borbot's concern that, despite an initial bond hearing, detention under section 236(a) might become unreasonably prolonged, it concluded that Borbot failed to identify a basis in the record to demonstrate that his is such a case. The court did not decide whether, if ever, the Due Process Clause might entitle an alien detained under section 236(a) to a new bond hearing. In a dissenting opinion, one judge recommended a new hearing to prevent improper influence of our immigration courts by foreign governments, considering that Borbot was being held in custody because he was deemed a danger pursuant to an Interpol Red Notice requested by Russia.